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Supreme Court of the United States

OCTOBER TERM, 1963

No. 655

WILLIAM PEARLMAN, WILLIAM BLANK, BLAIR BROWN and LEONARD COHEN, *Petitioners*,

v.

STATE OF MARYLAND

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

REPLY TO RESPONDENT'S OPPOSITION

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1. According to respondent's Opposition (pp. 5-8), it is routine "under long-standing prior decisions of the Maryland Court of Appeals" (Opp. 5) that common-law conspiracy indictments should be as uninformative, or almost so, as the one here. Yet respondent makes no effort to show how this indictment, which charges nothing more definite than a conspiracy to be

dishonest, supplies any intelligible delineation of the nature of the accusation or the alleged misconduct which prompted it. The Opposition thus reveals the need for the Court to take the earliest opportunity—this case—to correct what is not merely an isolated mistake, but a pervasive malpractice in Maryland. Conversely, if the Court rejects the opportunity, we may be sure that the unconstitutional practice will be more solidified and prevalent than ever in Maryland and that it may spread to other states as well.

2. We would not trouble to notice respondent's transparent endeavor to prejudice petitioners by ad hominem, extravagant representations, were it not that the recitations of wickedness confirm our thesis that petitioners' transgressions are still undefined.

From respondent's statement of facts, there emerges as petitioners' worst offense their cheating of "widows without business experience, unlearned and illiterate persons, or old people" by writing in the note and mortgage a price which was ten percent more than double the contract price (Opp. 3, 4). The Court of Appeals, however, was oblivious to any such conduct or plot. It described the pricing practice of petitioners' business as follows (Pet., A5-A6, emphasis supplied):

> "When a sale was made, the salesman would have the customer sign a contract which set forth the work to be done and the estimated cash price, *or*, if a time plan was desired, the amount of each monthly payment and the total number of payments were also set forth. In arriving *at the cash price*, it was customary to double the estimated *cost* to the company. And *on a time plan* an additional ten per centum carrying charge per year was added to the cash price."

In short, if a customer bought for cash (in which event there were, of course, no note and mortgage), he was quoted and paid the cash price, computed by doubling the company's cost. If he bought on credit, he was quoted and charged monthly payments which in total equalled the cash price plus a ten per cent per annum carrying charge. The Court of Appeals saw nothing illegal or nefarious about this, nor do we.

The significant thing is, however, that because of the vagueness of the indictment, respondent is able even at this late date to ascribe to petitioners any criminality it chooses. If the decision below stands and petitioners go to jail, neither they, nor the State, nor anybody else will ever know what were the infractions that sent them there.

Respectfully submitted,

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